

Assembly Bill No. 1845

CHAPTER 293

An act to amend Section 5515 of, and to add Section 2081.4 to, the Fish and Game Code, relating to fish.

[Approved by Governor September 12, 2016. Filed with
Secretary of State September 12, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1845, Dahle. Protected species: take: rough sculpin.

Existing law prohibits the taking or possession of any fully protected fish, except as provided, and designates the rough sculpin as a fully protected fish. The California Endangered Species Act prohibits the taking of an endangered or threatened species, except as specified. The Department of Fish and Wildlife may authorize the take of listed species if the take is incidental to an otherwise lawful activity and the impacts are minimized and fully mitigated.

This bill would permit the department to authorize, under the California Endangered Species Act, the take of the rough sculpin (*Cottus asperimus*) resulting from impacts attributable to replacing the Spring Creek Bridge in the County of Shasta if certain conditions are satisfied.

This bill would incorporate additional changes to Section 5515 of the Fish and Game Code, proposed by AB 2001 and AB 2488, that would become operative only if this bill and either or both of those bills are chaptered and become effective on or before January 1, 2017, and this bill is chaptered last.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares as follows:

(a) The Spring Creek Bridge at Fall River is an old, 150-foot-long multispans wood structure that is constantly exposed to water and in a constant state of decay requiring significant and ongoing maintenance.

(b) The bridge provides access to ranches, residences, and United States Forest Service lands. If the existing Spring Creek Bridge fails, traffic will be detoured on to United States Forest Service roads and private, unpaved roads that may be impassable in winter months.

(c) In order to maintain access to these lands, the County of Shasta must be authorized to take the rough sculpin to replace the Spring Creek Bridge at Fall River.

SEC. 2. Section 2081.4 is added to the Fish and Game Code, to read:

2081.4. (a) The department may authorize, under this chapter, the take of the rough sculpin (*Cottus asperimus*) resulting from impacts attributable to replacing the Spring Creek Bridge in the County of Shasta, if all of the following conditions are satisfied:

(1) The requirements of subdivisions (b) and (c) of Section 2081 are satisfied for the take of the rough sculpin.

(2) The department ensures that all further measures necessary to satisfy the conservation standard of subdivision (d) of Section 2805 are incorporated into the project.

(3) The take authorization provides for the development and implementation, in cooperation with federal and state agencies, of a monitoring program and an adaptive management process until the department determines that any impacts resulting from the replacement of the Spring Creek Bridge have been fully mitigated.

(b) This section shall not be construed to exempt the project described in subdivision (a) from any other law.

SEC. 3. Section 5515 of the Fish and Game Code is amended to read:

5515. (a) (1) Except as provided in this section or Section 2081.4, 2081.6, 2081.7, or 2835, a fully protected fish shall not be taken or possessed at any time. No provision of this code or any other law shall be construed to authorize the issuance of a permit or license to take a fully protected fish, and no permit or license previously issued shall have force or effect for that purpose. However, the department may authorize the taking of a fully protected fish for necessary scientific research, including efforts to recover fully protected, threatened, or endangered species. Before authorizing the take of a fully protected fish, the department shall make an effort to notify all affected and interested parties to solicit information and comments on the proposed authorization. The notification shall be published in the California Regulatory Notice Register and be made available to each person who has notified the department, in writing, of his or her interest in fully protected species and who has provided an email address, if available, or postal address to the department. Affected and interested parties shall have 30 days after notification is published in the California Regulatory Notice Register to provide relevant information and comments on the proposed authorization.

(2) As used in this subdivision, “scientific research” does not include an action taken as part of specified mitigation for a project, as defined in Section 21065 of the Public Resources Code.

(3) A legally imported fully protected fish may be possessed under a permit issued by the department.

(b) The following are fully protected fish:

- (1) Colorado River squawfish (*Ptychocheilus lucius*).
- (2) Thicktail chub (*Gila crassicauda*).
- (3) Mohave chub (*Gila mohavensis*).
- (4) Lost River sucker (*Catostomus luxatus*).
- (5) Modoc sucker (*Catostomus microps*).
- (6) Shortnose sucker (*Chasmistes brevirostris*).

- (7) Humpback sucker (*Xyrauchen texanus*).
- (8) Owens River pupfish (*Cyprinodon radiosus*).
- (9) Unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*).

(10) Rough sculpin (*Cottus asperimus*).

SEC. 3.1. Section 5515 of the Fish and Game Code is amended to read:

5515. (a) (1) Except as provided in this section or Section 2081.4, 2081.6, 2081.7, 2089.7, or 2835, a fully protected fish shall not be taken or possessed at any time. No provision of this code or any other law shall be construed to authorize the issuance of a permit or license to take a fully protected fish, and no permit or license previously issued shall have force or effect for that purpose. However, the department may authorize the taking of a fully protected fish for necessary scientific research, including efforts to recover fully protected, threatened, or endangered species. Before authorizing the take of a fully protected fish, the department shall make an effort to notify all affected and interested parties to solicit information and comments on the proposed authorization. The notification shall be published in the California Regulatory Notice Register and be made available to each person who has notified the department, in writing, of his or her interest in fully protected species and who has provided an email address, if available, or postal address to the department. Affected and interested parties shall have 30 days after notification is published in the California Regulatory Notice Register to provide relevant information and comments on the proposed authorization.

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- (8) Owens pupfish (*Cyprinodon radiosus*).
- (9) Unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*).

(10) Rough sculpin (*Cottus asperimus*).

SEC. 3.2. Section 5515 of the Fish and Game Code is amended to read:

5515. (a) (1) Except as provided in this section or Section 2081.4, 2081.6, 2081.7, 2081.10 or 2835, a fully protected fish shall not be taken or possessed at any time. No provision of this code or any other law shall be construed to authorize the issuance of a permit or license to take a fully protected fish, and no permit or license previously issued shall have force

or effect for that purpose. However, the department may authorize the taking of a fully protected fish for necessary scientific research, including efforts to recover fully protected, threatened, or endangered species. Before authorizing the take of a fully protected fish, the department shall make an effort to notify all affected and interested parties to solicit information and comments on the proposed authorization. The notification shall be published in the California Regulatory Notice Register and be made available to each person who has notified the department, in writing, of his or her interest in fully protected species and who has provided an email address, if available, or postal address to the department. Affected and interested parties shall have 30 days after notification is published in the California Regulatory Notice Register to provide relevant information and comments on the proposed authorization.

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- (8) Owens River pupfish (*Cyprinodon radiosus*).
- (9) Unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*).
- (10) Rough sculpin (*Cottus asperimus*).

SEC. 3.3. Section 5515 of the Fish and Game Code is amended to read:

5515. (a) (1) Except as provided in this section or Section 2081.4, 2081.6, 2081.7, 2081.10, 2089.7, or 2835, a fully protected fish shall not be taken or possessed at any time. No provision of this code or any other law shall be construed to authorize the issuance of a permit or license to take a fully protected fish, and no permit or license previously issued shall have force or effect for that purpose. However, the department may authorize the taking of a fully protected fish for necessary scientific research, including efforts to recover fully protected, threatened, or endangered species. Before authorizing the take of a fully protected fish, the department shall make an effort to notify all affected and interested parties to solicit information and comments on the proposed authorization. The notification shall be published in the California Regulatory Notice Register and be made available to each person who has notified the department, in writing, of his or her interest in fully protected species and who has provided an email address, if available, or postal address to the department. Affected and interested parties shall have 30 days after notification is published in the California Regulatory

Notice Register to provide relevant information and comments on the proposed authorization.

(2) As used in this subdivision, “scientific research” does not include an action taken as part of specified mitigation for a project, as defined in Section 21065 of the Public Resources Code.

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- (8) Owens pupfish (*Cyprinodon radiosus*).
- (9) Unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*).
- (10) Rough sculpin (*Cottus asperimus*).

SEC. 4. (a) Section 3.1 of this bill incorporates amendments to Section 5515 of the Fish and Game Code proposed by both this bill and Assembly Bill 2001. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2017, (2) each bill amends Section 5515 of the Fish and Game Code, (3) Assembly Bill 2488 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after Assembly Bill 2001, in which case Sections 3, 3.2, and 3.3 of this bill shall not become operative.

(b) Section 3.2 of this bill incorporates amendments to Section 5515 of the Fish and Game Code proposed by both this bill and Assembly Bill 2488. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2017, (2) each bill amends Section 5515 of the Fish and Game Code, (3) AB 2001 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after Assembly Bill 2488 in which case Sections 3, 3.1, and 3.3 of this bill shall not become operative.

(c) Section 3.3 of this bill incorporates amendments to Section 5515 of the Fish and Game Code proposed by this bill, Assembly Bill 2001, and Assembly Bill 2488. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2017, (2) all three bills amend Section 5515 of the Fish and Game Code, and (3) this bill is enacted after Assembly Bill 2001 and Assembly Bill 2488, in which case Sections 3, 3.1, and 3.2 of this bill shall not become operative.